



March 27, 2009

ENGROSSED SENATE BILL No. 181

DIGEST OF SB 181 (Updated March 25, 2009 2:51 pm - DI 69)

Citations Affected: IC 35-42; IC 35-50; noncode.

Synopsis: Child seduction and repeat sex offenders. Expands the group of persons who commit child seduction by adding persons employed by a charter school or special education cooperative and persons otherwise affiliated with a school corporation, charter school, nonpublic school, or special education cooperative if the person affiliated with the school or cooperative: (1) has a position of trust with respect to a child who attends the school or cooperative; (2) is engaged in the provision of care or supervision to a child who attends the school or cooperative; and (3) is at least four years older than the child. Provides that a military recruiter whose primary job is recruiting individuals to enlist with the armed forces commits child seduction if the military recruiter who is attempting to enlist a child at least 16 years old but less than 18 years: (1) engages in sexual intercourse with the child; (2) engages in deviate sexual conduct with the child; or (3) fondles the child. Provides that an attempted sex offense may be used to establish that a person is a repeat sex offender.

Effective: July 1, 2009.

**Lubbers, Steele, Delph, Broden,
Zakas, Miller**

(HOUSE SPONSORS — PIERCE, BATTLES)

January 7, 2009, read first time and referred to Committee on Judiciary.
February 12, 2009, amended, reported favorably — Do Pass.
February 17, 2009, read second time, ordered engrossed.
February 18, 2009, engrossed.
February 19, 2009, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 25, 2009, read first time and referred to Committee on Courts and Criminal Code.
March 26, 2009, amended, reported — Do Pass.

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ES 181—LS 6752/DI 106+



March 27, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 181

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-42-4-7, AS AMENDED BY P.L.1-2005,
2 SECTION 228, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this section,
4 "adoptive parent" has the meaning set forth in IC 31-9-2-6.

5 (b) As used in this section, "adoptive grandparent" means the parent
6 of an adoptive parent.

7 **(c) As used in this section, "charter school" has the meaning set**
8 **forth in IC 20-18-2-2.5.**

9 ~~(c)~~ (d) As used in this section, "child care worker" means a person
10 who:

11 (1) provides care, supervision, or instruction to a child within the
12 scope of the person's employment in a shelter care facility; ~~or~~

13 (2) is employed by a:

14 (A) school corporation; ~~or~~

15 **(B) charter school;**

16 ~~(B)~~ (C) nonpublic school; ~~or~~

17 **(D) special education cooperative;**

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attended by a child who is the victim of a crime under this chapter; or

(3) is:

(A) affiliated with a:

- (i) school corporation;
- (ii) charter school;
- (iii) nonpublic school; or
- (iv) special education cooperative;

attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated;

(B) in a position of trust in relation to a child who attends the school or cooperative;

(C) engaged in the provision of care or supervision to a child who attends the school or cooperative; and

(D) at least four (4) years older than the child who is the victim of a crime under this chapter.

The term does not include a student who attends the school or cooperative.

~~(d)~~ (e) As used in this section, "custodian" means any person who resides with a child and is responsible for the child's welfare.

(f) As used in this section, "military recruiter" means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard.

~~(e)~~ (g) As used in this section, "nonpublic school" has the meaning set forth in IC 20-18-2-12.

~~(f)~~ (h) As used in this section, "school corporation" has the meaning set forth in IC 20-18-2-16.

(i) As used in this section, "special education cooperative" has the meaning set forth in IC 20-35-5-1.

~~(g)~~ (j) As used in this section, "stepparent" means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.

~~(h)~~ (k) If a person who: ~~is:~~

- (1) is at least eighteen (18) years of age; and
- (2) is:

(A) the:

- ~~(A)~~ (i) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or

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~~(B)~~ (ii) child care worker for; or

(B) a military recruiter who is attempting to enlist;

a child at least sixteen (16) years of age but less than eighteen (18) years of age;

engages with the child in sexual intercourse, deviate sexual conduct (as defined in IC 35-41-1-9), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction, a Class D felony.

SECTION 2. IC 35-50-2-14, AS AMENDED BY P.L.173-2006, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. **(a) As used in this section, "sex offense" means a felony conviction:**

(1) under IC 35-42-4-1 through IC 35-42-4-9 or under IC 35-46-1-3;

(2) for an attempt or conspiracy to commit an offense described in subdivision (1); or

(3) for an offense under the laws of another jurisdiction, including a military court, that is substantially similar to an offense described in subdivision (1).

~~(a)~~ **(b)** The state may seek to have a person sentenced as a repeat sexual offender for a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, **subsection (a)(1) or (a)(2)** by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~. **subsection (a).**

~~(b)~~ **(c)** After a person has been convicted and sentenced for a felony committed **under subsection (a)(1) or (a)(2) after sentencing having been sentenced** for a prior unrelated ~~felony conviction~~ sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, **subsection (a)**, the person has accumulated one (1) prior unrelated felony **sex offense** conviction. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

(2) it is ~~one~~ a conviction for which the person has been pardoned.

~~(c)~~ **(d)** If the person was convicted of the sex offense in a jury trial,

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the jury shall reconvene to hear evidence in the enhancement hearing.
 If the trial was to the court, or the judgment was entered on a guilty
 plea, the court alone shall hear evidence in the enhancement hearing.

~~(d)~~ **(e)** A person is a repeat sexual offender if the jury (if the hearing
 is by jury) or the court (if the hearing is to the court alone) finds that
 the state has proved beyond a reasonable doubt that the person had
 accumulated one (1) prior unrelated felony **sex offense** conviction.
~~under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3; or had~~
~~accumulated one (1) prior unrelated conviction for an offense~~
~~committed in another jurisdiction that is substantially similar to a sex~~
~~offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.~~

~~(e)~~ **(f)** The court may sentence a person found to be a repeat sexual
 offender to an additional fixed term that is the advisory sentence for the
 underlying offense. However, the additional sentence may not exceed
 ten (10) years.

SECTION 3. [EFFECTIVE JULY 1, 2009] **IC 35-42-4-7 and**
IC 35-50-2-14, both as amended by this act, apply only to crimes
committed after June 30, 2009.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 181, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 9, delete "and".

Page 2, line 10, delete "with the school in which the person has" and insert **"of trust in relation to a child who attends the school;**

(C) engaged in the provision of care or supervision to a child who attends the school; and

(D) at least four (4) years older than the child who is the victim of a crime under this chapter."

Page 2, delete lines 11 through 12.

Page 2, between lines 15 and 16, begin a new paragraph and insert:

"(f) As used in this section, "military recruiter" means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard."

Page 2, line 16, delete "(f)" and insert **"(g)"**.

Page 2, line 18, delete "(g)" and insert **"(h)"**.

Page 2, line 20, delete "(h)" and insert **"(i)"**.

Page 2, line 23, delete "(i)" and insert **"(j)"**.

Page 2, line 23, after "who" insert ":".

Page 2, line 23, strike "is:".

Page 2, line 24, after "(1)" insert **"is"**.

Page 2, line 25, after "(2)" insert **"is:**

(A)".

Page 2, line 26, beginning with "(A)" begin a new line triple block indented.

Page 2, line 26, strike "(A)" and insert **"(i)"**.

Page 2, line 28, beginning with "(B)" begin a new line triple block indented.

Page 2, line 28, strike "(B)" and insert **"(ii)"**.

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Page 2, line 28, after "for;" insert "**or**"

(B) a military recruiter who is attempting to enlist;".

and when so amended that said bill do pass.

(Reference is to SB 181 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 181, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 14, after "corporation;" insert "**or**".

Page 1, line 15, delete "or".

Page 1, line 16, after "school;" insert "**or**"

(D) special education cooperative;".

Page 2, line 5, delete "or".

Page 2, line 6, after "school;" insert "**or**"

(iv) special education cooperative;".

Page 2, line 11, delete ";" and insert "**or cooperative;"**".

Page 2, line 13, delete ";" and insert "**or cooperative;"**".

Page 2, line 16, delete "." and insert "**or cooperative."**".

Page 2, between lines 28 and 29, begin a new paragraph and insert:

"(i) As used in this section, "special education cooperative" has the meaning set forth in IC 20-35-5-1."

Page 2, line 29, delete "(i)" and insert "**(j)**".

Page 2, line 32, delete "(j)" and insert "**(k)**".

Page 3, delete lines 4 through 6, begin a new paragraph and insert:

"SECTION 2. IC 35-50-2-14, AS AMENDED BY P.L.173-2006, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. **(a) As used in this section, "sex offense" means a felony conviction:**

(1) under IC 35-42-4-1 through IC 35-42-4-9 or under IC 35-46-1-3;

(2) for an attempt or conspiracy to commit an offense described in subdivision (1); or

(3) for an offense under the laws of another jurisdiction, including a military court, that is substantially similar to an

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offense described in subdivision (1).

~~(a)~~ **(b)** The state may seek to have a person sentenced as a repeat sexual offender for a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; **subsection (a)(1) or (a)(2)** by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated one (1) prior unrelated felony conviction for a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~. **subsection (a).**

~~(b)~~ **(c)** After a person has been convicted and sentenced for a felony committed **under subsection (a)(1) or (a)(2) after sentencing having been sentenced** for a prior unrelated felony conviction sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~, or for an offense committed in another jurisdiction that is substantially similar to a sex offense under ~~IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3~~; **subsection (a)**, the person has accumulated one (1) prior unrelated felony sex offense conviction. However, a conviction does not count for purposes of this subsection, if:

(1) it has been set aside; or

(2) it is ~~one~~ **a conviction** for which the person has been pardoned.

~~(c)~~ **(d)** If the person was convicted of the sex offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

~~(d)~~ **(e)** A person is a repeat sexual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated one (1) prior unrelated felony sex offense conviction. ~~under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3, or had accumulated one (1) prior unrelated conviction for an offense committed in another jurisdiction that is substantially similar to a sex offense under IC 35-42-4-1 through IC 35-42-4-9 or IC 35-46-1-3.~~

~~(e)~~ **(f)** The court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.

SECTION 3. [EFFECTIVE JULY 1, 2009] **IC 35-42-4-7 and IC 35-50-2-14, both as amended by this act, apply only to crimes**

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committed after June 30, 2009."

and when so amended that said bill do pass.

(Reference is to SB 181 as printed February 13, 2009.)

PIERCE, Chair

Committee Vote: yeas 12, nays 0.

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